

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case simply to better define the subject matter of the present invention; no new matter is added in these amendments. After the above amendment, application claims 14, 17, 21-22, 24-25, 27-29, and 31-32 are pending in the application. Application claim 14 and 17 are the only independent claims.

Applicant has studied the Office Action mailed July 7, 2006, and has the following remarks.

Allowable Matter

The Examiner is thanked for his indication that claims 17 and 21 would be allowable if placed in independent form. Applicants have amended claim 17 to include the limitations of prior independent claim 14 and therefore place it in independent form. Applicant therefore believes claims 17 and 21 (which depends from claim 17) are allowable over the art of record.

35 U.S.C. § 103

The Examiner rejected Claims 14, and 27-29 as being obvious over Waters et al. (US 4,344,505) in view of Helbig (US 4,312,423); and Claims 22, 24, 25, and 31-32 as obvious in light of the above combination in further view of Anghinetti et al. (US 3,896,595), Fuller (US 4,281,743), Porter (US 5,628,158), or Daw (US 4,832,153).

The cited references fail to show all elements of independent claim 14, as amended. In particular, the cited art fails to show the combination of an existing attic access opening having a

surrounding structure and an insulating cover, the insulating cover comprising two detachable parts.

Helbig

Helbig only shows a packaging and energy saving device that relies on the existing surrounding structure of the existing attic opening for a surface upon which a single insulating element rests and to which that element seals. Helbig does not provide for an existing attic opening having a surrounding structure integral to the attic floor upon which a cover having two detachable components (a frame and a closure member) is placed.

As amended, instant claim 14 includes a continuous frame defining a frame opening for alignment with the existing attic access opening, and which encloses the attic access opening when the lower surface of the frame is placed on the existing attic access surrounding structure which is an integral part of the building's ceiling, and a removable closure member with a depending central portion and an upper portion forming flanges; these two portions of the closure frictionally and snugly engaging both the interior and upper surface of the frame along each of the frame's side walls and end walls.

To restate simply, the combination in claim 14 includes three parts: 1) an existing attic opening having a surrounding structure integral to the building's ceiling, 2) a frame whose lower surface is on that surrounding structure and encloses the existing attic opening, and 3) a removable closure member designed to seal to the frame at its upper and interior surfaces. The Helbig device only includes two parts: the existing and integral attic structure, and a single piece closure which seals to the existing attic structure.

The Examiner asserts Helbig shows a closure member (generally Helbig elements 24 and 28) and a frame (Helbig element 26). The element "26", however, is clearly labeled as the floor joists of the attic. This is therefore obviously the structure of an existing attic opening and

therefore cannot be the frame of the instant claims, as those are separate components; the attic opening is a part of the building's ceiling, while the frame is a non-integral added part.

Moreover, there are only two joists shown, so the joists (26) do not have spaced side walls and spaced end walls. Both of these are also elements of the claimed frame.

Even if one was to accept that the floor joists were the frame and not the existing structure of an attic entrance (which is clearly contrary to both of teaching the Helbig and a common sense understanding of the structure of an existing attic entrance), the device of Helbig still clearly fails to show all elements of claim 14 as the joists do not have their lower surface supported on a surrounding and integral structure for an existing attic opening. There is no structure shown in Helbig upon which the lower surface of the joists are supported (see, e.g., FIG. 7).

In the event that the element 12 of Helbig was taken by the Examiner to be the frame or the surrounding structure of the existing attic access the elements are still not shown. The lid 24/26 only interacts with the upper surface of element 12 and the lower surface of element 12 is not supported on the floor joists, preventing it from being the frame, and element 12 does not support the lower surfaces of the floor joists, preventing it from being the surrounding structure of the existing attic opening.

Waters

With regards to Waters, Waters also fails to show the claimed three parts of the claimed combination, due to the inseverability of Waters' cover and frame.

Applicant has repeatedly pointed out to the Examiner that Waters does not describe or indicate a cover having two detachable pieces. Waters only describes an insulation cap (10) for disappearing stairwells that provides access to the attic opening either 1) by hinged movement of

a cover (28) that is inseparable from the cap (10), or 2) by moving the entire cap unit (10) relative to the attic opening.

Waters does not fill the gaps of Helbig. Waters does not show separation of the closure member from the frame, and so cannot show a continuous frame with a lower surface that is placed on the attic access surrounding structure and an upper surface that detachably seals to a closure member with two continuous seals; Waters thus shows only two units, namely the surrounding attic structure and a “cap” structure. In effect, the same two elements of Helbig.

The Examiner asserts that Waters’ “cap” is the cover portion of the device rather than the device as a whole and asserts Waters discloses moving “the cap away from its position over the opening” (Page 3).

Applicant respectfully traverses as the Examiner is applying a meaning to the term “cap” which is clearly contradictory to the use of that term in Waters. Specifically, Waters clearly refers to the combined device including the cover (28) and all four walls (20), (22), (24), and (26) as the “cap” (see e.g. FIG. 3 which illustrates “an exploded view illustrating a proposed scheme for fabricating the insulated cap of FIG. 1.” Col. 2, ll. 22-23 [emphasis added]) The Examiner, however, is asserting that the term “cap” refers to the piece 28 of Waters. The piece 28 is however, clearly and repeatedly referred to as the “cover” which is only a portion of the cap of Waters. Therefore, even if Waters refers to moving the “cap” relative to the attic opening, this says nothing of moving the cover 28 relative to the walls 20, 22, 24, and 26. Therefore, the Examiner’s assertion is a clearly incorrect interpretation of the reference.

Applicant has further clarified the claim to point out that the cover of the instant claims is detachable from the frame, and the frame remains in place on the attic opening when the cover is moved to show how moving the cap of Waters is different from moving the closure member of the instant claims.

Waters only provides for a device with a hinged lid, which, as discussed in depth in prior responses and previously acknowledged by the Examiner, is different from the current claims, and a “cap” which can be moved relative the existing attic opening surrounding structure. It does not provide for the cover of the instant claims which require a frame and a detachable closure member, the cover then being placed on the surrounding structure of an existing attic opening.

As none of the embodiments of Waters contemplates separation of the cover (28) and the walls (20) (22), (24) , and (26) while accessing the attic access opening, Waters also shows only the same two pieces as Helbig and no combination of these references can render the claims obvious.

Anghinetti, Fuller, Porter, and Daw

Applicant notes that all the remaining claims are dependent on claim 14 and claim 14 only stands rejected in light of the combination of Helbig and Waters. Applicant asserts that none of these secondary references in combination with any of the primary references provides the necessary elements of an existing attic opening, and a cover having a frame and a detachable closure member as discussed in claim 14. As all other claims depend from claim 14, if claim 14 is allowable in light of the references, all remaining claims are also allowable.

Secondary Considerations

Applicant again refers the Examiner to the previously filed Rule 132 declarations which point out that numerous customers, resellers, contractors, and a University have recognized that The Energy Guardian™, a device which is believed to embody at least claim 14 of the instant case, is an innovative solution to a long felt problem. The Declaration and attached documents pointed out how prior attic covers were insufficient and did not effectively solve the problem of how to provide energy efficient attic closures. Some attached documents specifically refer to the

instant device as an improvement over prior designs due to the inclusion of the sealing lid as it eliminates the problem present in other devices of properly positioning the lid and sealing. The depending portion will sealingly engage the frame in only one position; users are therefore confident that the device is properly closed and sealed, unlike users of other devices who may inadvertently leave the device only partially covering the attic access opening. This recognition by the industry of a device embodying the present claims as an innovative solution to a long-felt problem provides for additional evidence that claim 14 is non-obvious. These secondary considerations of non-obviousness provide further support to the conclusion that the device of the instant claims is non-obvious.

Conclusion

In light of the above, Applicant respectfully requests entrance of the above amendment and allowance of all pending claims so that this case can pass on to issue. In the alternative, Applicant requests entrance of the above amendment to present claims in better form for Appeal.

As a final point, it is believed no fees are due in conjunction with this filing; however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975.**

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,
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